



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

WEST CENTRAL REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Steven A. Dietrich
Regional Director

**COMMONWEALTH OF VIRGINIA
WASTE MANAGEMENT BOARD
CONSENT ORDER
ISSUED TO
THE TOWN OF CHRISTIANSBURG
FOR THE
TOWN OF CHRISTIANSBURG LANDFILL
Closed Solid Waste Permit No. 452**

Section A: Purpose

This is a consent order issued under the authority of §10.1-1455 of the Code of Virginia (1950), as amended, by the Virginia Waste Management Board to the Town of Christiansburg to resolve certain alleged violations of environmental laws and/or regulations at the closed Town of Christiansburg landfill that operated pursuant to Solid Waste Facility Permit Number 452.

Section B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Code” means the Code of Virginia (1950), as amended.
2. “Board” means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “The Town” means the Town of Christiansburg.

6. “Order” means this document, also known as a consent order.
7. “Regulations” means the Virginia Solid Waste Management Regulations, 9 VAC 20-80-10 *et seq.* (“SWMR”).
8. “The Facility” means the closed Town of Christiansburg landfill, which operated under Solid Waste Facility Permit Number 452.
9. “The Permit” means Solid Waste Facility Permit Number 452 for the closed Town of Christiansburg landfill, as amended.

Section C: Findings of Fact and Conclusions of Law

Requirements of the Permit and the Regulations

1. The general requirement for control of decomposition gases at sanitary landfills is stated at 9 VAC 20-80-280.A.1 as follows:

To provide for the protection of public health and safety, and the environment, the operator shall insure that decomposition gases generated at a facility are controlled during the periods of operation, closure and post-closure care, in accordance with the following requirements: . . . b. The concentration of methane gas migrating from the landfill shall not exceed the lower explosive limit for methane at the facility boundary.

2. Under 9 VAC 20-80-280.E.1,

When the results of gas monitoring indicate concentrations of methane in excess of the compliance levels required by subdivision A.1 of this subsection, the operator shall: . . . c. Within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for approval and amendment of the facility permit. The plan shall describe the nature and extent of the problem and the proposed remedy.

3. Section 3.4 of Module XIV of the Permit states that:

Installation of the landfill gas remediation system will begin after approval of this Landfill Gas Management and Remediation Plan along with the Construction Plans and Specifications by VDEQ.

Gas Exceedances

4. On January 5, 2004, the Permit was amended to include a revised gas remediation plan that

included a schedule at Module XIV, Section 8.0 to remediate methane gas exceedances measured at the facility boundary. Relevant milestones and deadlines specified in the permit amendment are as follows:

Description of Work	Days	Calculated Date
Permit Amendment Approved	0	January 5, 2004
Procurement of Contractor	45	February 19, 2004
Material Acquisition	60	April 19, 2004
Construction	60	June 18, 2004
System Start-Up	30	July 18, 2004
Final Inspection	15	August 2, 2004

5. On August 19, 2004, the Town notified DEQ that it the system start-up date would be September 6, 2004.
6. On September 20, 2004, DEQ issued a Warning Letter to the Town indicating that the system start-up had not occurred by the deadline specified in the Permit amendment.
7. On January 12, 2005, DEQ issued a second Warning Letter to the Town indicating that they system start-up had still not occurred.
8. On February 10, 2005, the Town signed a Letter of Agreement with DEQ that committed the Town to the schedule specified in the table below. That table also includes the completion status of these requirements as of September 1, 2005.

Description of Work	Scheduled Completion	Actual Completion
Open bid for blower	February 9, 2005	February 15, 2005
Anticipated blower delivery	May 4, 2005	July 20, 2005
Blower installation complete	June 3, 2005	Not complete as of September 1, 2005
Start-up and testing complete	July 1, 2005	Not complete as of September 1, 2005

Submission of Post-Closure Care Plan	August 30, 2005	August 31, 2005
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9. On September 1, 2005, DEQ issued a Notice of Violation (“NOV”) to the Town, citing failure of the Town to comply with the gas remediation requirements of the Regulations and the Permit. The NOV also cited the Town for failure to correct certain deficiencies in the landfill post-closure plan.
10. The Town initiated system start-up of the gas remediation system in mid-September, 2005.
11. In a letter with attachments dated September 19, 2005, the Town addressed the deficiencies in the landfill post-closure plan.
12. On December 6, 2005, DEQ received from the Town a revised Post Closure Plan for the Facility. In a letter dated January 12, 2006, DEQ conditionally approved the Revised Post Closure Plan.

Summary of Alleged Violations

12. Based on correspondence, file reviews, and inspections or follow-up site visits, the Director alleges that the Town violated 9 VAC 20-80-280.A.1, 9 VAC 20-80-280.E.1, and Module XIV of the Permit by failing to perform gas remediation in accordance with schedules specified in the approved gas management plan.

Section D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it pursuant to Va. Code §10.1-1455, and upon consideration of Va. Code § 10.1-1186.2, the Board orders the Town and the Town agrees, to perform the actions described below and in Appendix A and Appendix B of this Order. In addition, the Board orders the Town, and the Town voluntarily agrees, to pay a civil charge of \$5,600.00 in settlement of the violations cited in this Order.

1. The Town shall pay \$1,400.00 of the civil charge within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier's check payable to “Treasurer of Virginia” and sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

The payment shall include the Town’s Federal Identification Number and shall state that it is being

tendered in payment of the civil charges assessed under this Order.

2. The Town shall satisfy \$4,200 of the civil charge upon completing the Supplemental Environmental Project (“SEP”) described in Appendix B of this Order.
3. The net cost of the SEP to the Town shall not be less than the amount set forth in Paragraph D.2. If it is, the Town shall pay the remaining amount in accordance with Paragraph D.1 of this Order, unless otherwise agreed to by the Department. “Net costs” means the costs of the project minus any tax savings, grants and first-year operation cost reductions or other efficiencies.
4. By signing this Order, the Town certifies that it has not commenced performance of the SEP before DEQ identified the violations in this Order and approved the SEP.
5. In the event that it publicizes the SEP or the SEP results, the Town shall state in a prominent manner that the project is a part of a settlement for an enforcement action.
6. The Department has sole discretion to:
 - a. Authorize any alternate SEP proposed by the Town; and
 - b. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.
7. Should the Department determine that the Town has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify the Town in writing. Within 30 days of being notified, the Town shall pay the amount specified in Paragraph 2 as provided in Paragraph 1 above.

Section E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of the Town, for good cause shown by the Town, or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those alleged violations pertaining to the facility specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts. This Order shall not limit the authority of the Board or the Director to seek remediation and/or civil penalties or civil charges pertaining to any other violations that may have occurred at the landfill.

Consent Order

Town of Christiansburg, SWP No. 452


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3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Town declares that it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, Code §§ 10.1-1400 *et seq.*, and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding, or to judicial review of, any action taken by the Board or the Director to enforce this Order.
5. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Town shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, or other act of God, war, strike, or other such occurrences. The Town must show that the circumstances resulting in the noncompliance were beyond its control and were not due to a lack of good faith or diligence on its part. The Town shall notify the Director and the Director of the Department's West Central Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Department's West Central Regional Office within 24 hours of the commencement of the condition causing or anticipated to cause the delay or noncompliance shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director of the Department of Environmental Quality or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance date that precedes the effective date of this Order.
10. Any plans, reports, schedules or specifications attached hereto or submitted by the Town and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall continue in effect until the Town petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. The undersigned representative of the Town by his or her signature certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Town to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Town.
13. By the signature of an authorized official below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5th day of MAY, 2006.


For David K. Paylor, Director
Department of Environmental Quality

Seen and Agreed to: R. Bruce Terpeny, Town Manager

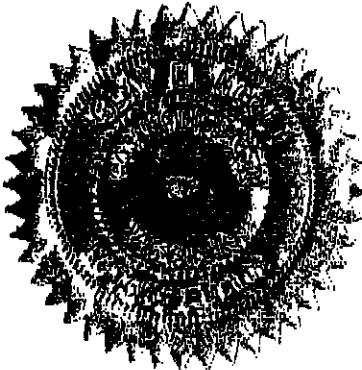
The foregoing instrument was acknowledged before me on March 29, 2006

By R. Bruce Terpeny, Town Manager, on behalf of the Town of Christiansburg,
(name) (title)

in the County/Town of Montgomery, Commonwealth of Virginia.

Clay M. McKay
Notary Public

My Commission expires: Dec. 31, 2010



APPENDIX A

1. Not later than 180 days after the effective date of this Order, the Town shall submit a revised gas remediation plan in accordance with the requirements of the Regulations and the Permit that includes a plan and schedule ("P&S") for bringing the Facility into compliance with the methane gas concentration requirements specified at 9 VAC 20-80-250.A.1. The Town shall respond to requests from DEQ for technical revisions of the P&S within 30 days of receiving such requests and shall comply with the P&S after it is approved by DEQ.
2. Beginning 30 days after the effective date of this Order and by the 15th day of each month thereafter, the Town shall submit a monthly plan and report to DEQ that explains: a) what the Town has done during the previous 30 days to bring the Facility into compliance with the methane gas concentration requirements cited above, and b) what the Town plans to do next to achieve compliance with those requirements. The Town shall submit the plan and report on the schedule specified herein until its revised gas remediation plan submitted under Paragraph 1 above is approved by DEQ.

APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. The SEP to be performed by the Town is stabilization of a 100-foot segment of Town Branch, a tributary of Crab Creek in the Town of Christiansburg, as described in a letter with enclosures dated March 1, 2006 from Olver Incorporated to DEQ. That letter and enclosures are incorporated herein by reference. Stabilization shall be accomplished by installation of gabion mattresses and seeding of denuded areas to establish vegetative cover.
2. The SEP shall be completed within 90 days after the effective date of this Order.
3. The Town acknowledges that it is solely responsible for completion of the SEP. Any transfer of funds, tasks, or otherwise by the Town to a third party, shall not relieve the Town of its responsibility for completion of the SEP as contained in this Order in the event that the third party does not perform tasks assigned to it by the Town.
4. The Town shall provide the Department with updates on SEP progress in the monthly report required at Paragraph 2 of Appendix A herein.
5. The Town shall submit written verification to the Department in the form of a certified statement itemizing costs, invoices, or similar documentation of the final overall and net cost of the SEP within 14 days of the project completion date.